

D.T.E. 04-68

November 22, 2004

Petition of Boston Edison Company d/b/a NSTAR Electric for Approvals Relating to the Assignment of Purchase Power Agreements with Ocean State Power and Ocean State Power II.

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I. INTRODUCTION

On July 16, 2004, pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94, and 94A, Boston Edison Company d/b/a NSTAR Electric (“NSTAR Electric” or “Company”), filed with the Department of Telecommunications and Energy (“Department”) for approval of a purchase and sale agreement (“Purchase and Sale Agreement”) with TransCanada Energy Ltd. (“TransCanada”), and approval of ratemaking treatment relating to the Purchase and Sale Agreement. The Purchase and Sale Agreement terminates two purchase power agreements (“PPAs”) between the Company and Ocean State Power (“OSP”) for OSP’s unit I (“OSP I”) and unit II (“OSP II”) generating facilities located in Burrillville, Rhode Island.¹ Under the OSP I PPA, which runs through December 31, 2010, OSP sells to NSTAR Electric, and NSTAR Electric buys from OSP, electricity produced at OSP’s unit I. Under the OSP II PPA, which runs through September 15, 2011, OSP sells to NSTAR Electric, and NSTAR Electric buys from OSP, electricity from OSP’s unit II. The Department docketed this matter as D.T.E. 04-68.

II. PROCEDURAL HISTORY

Pursuant to notice duly issued, the Department conducted a public hearing and procedural conference on September 8, 2004. The Attorney General of the Commonwealth of Massachusetts (“Attorney General”) filed a notice of intervention as of right pursuant to

¹ Both units are gas-fired, combined cycle generating facilities. The current capacity ratings of OSP I are 270.925 MW in summer and 316.925 MW in winter, and the current capacity ratings of OSP II are 270.180 MW in summer and 318.180 MW in winter (Exh. NSTAR-RBH at 24).

G.L. c. 12, § 11E. The Department granted limited participant status to TransCanada, ProGas Limited, and Cape Light Compact. The Department conducted an evidentiary hearing on October 14, 2004. The Company sponsored the testimony of Geoffrey O. Lubbock, vice president, financial strategic planning and policy for NSTAR Electric and Gas Company, and Robert B. Hevert, president of Concentric Energy Advisors, Inc. (“CEA”). The Company and the Attorney General filed initial briefs on October 26, 2004. On November 1, 2004, the Company filed a reply brief, and the Attorney General filed a letter in lieu of a reply brief.

On November 9, 2004, NSTAR Electric filed a supplemental response to RR-DTE-6, consisting of the Fall 2004 Henwood Forecast,² updating fuel and energy price forecasts on which the Company’s customer savings were based. On November 12, 2004, the Company filed an additional supplemental response to RR-DTE-6, which included revisions to its customer savings estimates based on the updated Henwood forecast data. On November 18, 2004, the Department issued a supplemental record request to NSTAR Electric, asking it to provide a sensitivity analysis for changes to energy and fuel prices for customer savings using the updated Henwood fall 2004 forecast. NSTAR Electric responded to the supplemental record request on November 19, 2004. The evidentiary record in this proceeding includes 111 exhibits and the Company’s responses to eleven record requests.

² The Henwood study is an industry-known, independent forecast of key energy variables. The Department has previously approved PPA buyouts where projected customer savings have been based on the Henwood study. See D.T.E. 04-60, at 26.

III. STANDARD OF REVIEW

An electric company that seeks to recover transition costs must take efforts to mitigate those costs to the maximum extent possible. G.L. c. 164, §§ 1G(d)(1) and (2). As part of its mitigation efforts, the company must make a good faith effort to renegotiate any above-market power purchase contracts. Id. If a negotiated contract buyout or other modification to the terms and conditions of such contracts is likely to achieve savings to the ratepayers and is otherwise in the public interest, the Department may allow the company to recover the remaining amounts in excess of market value associated with the contract in the transition charge. G.L. c. 164, §§ 1G(b)(1)(iv) and 1G(d)(2).

In determining whether to approve a power contract buyout, buy-down, or renegotiation, the Department has applied its standard of review for settlement agreements, i.e., a standard of reasonableness. See e.g., Canal Electric Company/Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 02-34, at 21 (2002); Cambridge Electric Light Company, D.T.E. 01-94, at 7 (2002); Commonwealth Electric Company, D.T.E. 99-69, at 7 (1999); Boston Edison Company, D.T.E. 99-16, at 5-6 (1999); Western Massachusetts Electric Company, D.T.E. 99-56, at 7-8 (1999); Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 04-60, at 6 (2004). The Department must review all available information to ensure that the agreement is in the public interest. See, e.g., Western Massachusetts Electric Company, D.T.E. 99-101, at 5-6 (2000); Commonwealth Electric Company, D.P.U. 91-200, at 5 (1993). In determining whether a contract amendment or termination is consistent with the public interest, the Department has

considered whether the termination is consistent with a company's approved restructuring plan. In Boston Edison Company, D.P.U./D.T.E. 96-23, at 46-47 (1998), the Department found that the Company's restructuring settlement, which provided for the buyout of above-market purchase power obligations, was consistent or substantially complied with the Electric Industry Restructuring Act (the "Act")³.

IV. THE AUCTION PROCESS AND PURCHASE AND SALE AGREEMENT

A. Overview

NSTAR Electric proposes to permanently assign its existing PPAs with OSP to TransCanada (Exh. NSTAR-GOL at 2). The OSP generating facility is wholly-owned and operated by TransCanada (Exh. NSTAR-RBH at 24). Under the OSP I PPA, the Company is obligated to purchase 23.5 percent of the summer and winter energy and capacity (id.). Under the OSP II PPA, the Company is obligated to purchase 23.5 percent of the summer and winter energy and capacity (id. at 25). Both PPAs are cost-of-service based contracts for delivered energy and capacity, and contain other provisions, including assignment rights, right to expansion capacity, security provisions, emission credits, and a most favored nation clause (id. at 24-25). NSTAR Electric proposes to terminate the PPAs as the result of a PPA divestiture plan that it initiated in July 2003 ("2003 Auction") (id. at 5).

B. The Auction Process

NSTAR Electric stated that its auction process was designed to ensure an equitable method structured to maximize the mitigation of transition costs associated with the PPAs (or

³ St. 1997, c. 164.

“Contracts”)⁴ (id. at 7). NSTAR Electric stated that 24 Contracts were subject to its auction process (id. at 4; Tr. at 31). CEA was selected to assist in the divestiture of these PPAs (Exh. NSTAR-1, at 3).

Following NSTAR Electric’s October 1, 2003 announcement of sale, an early interest package (“EIP”) was sent to approximately 90 potential bidders (Exh. NSTAR-RBH at 10). The EIP included an early interest letter, a confidentiality agreement, and a request for qualifications (id.; Exh. NSTAR-RBH-3). As a condition to receive further information and to be considered “Qualified Bidders,” bidders were required to execute a confidentiality agreement and submit a completed qualifications package, respectively (Exh. NSTAR-RBH at 11). By November 15, 2003, there were 25 Qualified Bidders (id.; Tr. at 31).

On October 17, 2003, the due diligence stage began as each Qualified Bidder received an offering memorandum (“OM”) and an Entitlement Transfer Agreement (“ETA”) (Exh. NSTAR-RBH at 14).⁵ NSTAR Electric states that this was designed to ensure that each bidder received the information necessary to timely and equitably complete its evaluation of the PPA entitlements (id. at 8). Additionally, each Qualified Bidder was assigned a specific CEA staff member for individualized assistance (id. at 9).

⁴ The 2003 Auction also included PPAs held by the Company’s affiliates, Cambridge Electric Light Company and Commonwealth Electric Company. For a more detailed description of the 2003 Auction see Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 04-60, at 8-11 (2004).

⁵ The OM included a detailed description of each Contract, an overview of the bidding process, and the preliminary terms of sale (Exh. NSTAR-RBH at 14).

On November 6, 2003, bid instructions and a bid form were made available to all Qualified Bidders (id. at 15; Exh. NSTAR-RBH-4). The bid form, which set a due date of November 21, 2003 for the receipt of bids, included two pricing options: (1) a lump-sum payment from the bidder to NSTAR Electric or from NSTAR Electric to the bidder; and (2) energy only pricing, i.e., the price per megawatthour a bidder would pay to NSTAR Electric for energy delivered under the specific PPA entitlement (Exh. NSTAR-RBH at 15-16).

On December 3, 2003, NSTAR Electric received twelve bids, which included two bids for the entire PPA entitlement portfolio and one bid for all but the OSP PPAs⁶ (id. at 17). The TransCanada bid for the OSP PPAs was also received on December 3, 2003 (Exh. DTE 2-26).

From December 2003 through March 2004, the Company and CEA evaluated the bids and continued to negotiate the specific aspects of each bidder's proposed financial and contractual terms, with the objective of identifying those combinations of bids that offered the greatest mitigation of transition costs (Exh. NSTAR-RBH at 17-18; Tr. at 35). This process of ongoing discussions and negotiations with the Qualified Bidders resulted in an agreement between NSTAR Electric and TransCanada to assign the OSP PPAs to TransCanada (Exh. NSTAR-RBH at 18).

To perform its evaluation of the bids, CEA separately valued each PPA entitlement to determine the total cost for the energy and capacity over the term of the agreement (id.; Exhs. NSTAR-RBH-5; NSTAR-RBH-6; DTE 1-10; DTE 1-11). The above-market costs were

⁶ The form of transaction proposed by the portfolio bidders was an ETA (Exh. NSTAR-RBH at 20).

calculated as the present value of the difference between the expected total cost under the Contract terms and the market value based on the Henwood study (Exh. NSTAR-RBH at 19). As a result of that evaluation, CEA and NSTAR Electric determined that the TransCanada bid would create the greatest reduction in OSP-related above-market costs (id. at 22). The TransCanada bid was the only bid for the OSP PPAs that was finalized (id. at 29; Tr. at 31, 128). Additionally, the Purchase and Sale Agreement calls for the assignment of the OSP PPAs, which NSTAR Electric determined to be more economically attractive than the transfer of rights and obligations under an ETA offered by competing bids (Exh. NSTAR-RBH at 22).

C. The Purchase and Sale Agreement

The Purchase and Sale Agreement that is the result of the 2003 Auction permanently transfers to TransCanada all obligations of the Company to purchase power produced at the OSP facility (Exh. NSTAR-GOL at 12). Under the Purchase and Sale Agreement, the Company would be required to pay TransCanada monthly support payments over the life of the PPAs, through September 15, 2011, for assuming all of the Company's rights and obligations under the contracts (id.; Exh. DTE-2-24). The Company states that the Purchase and Sale Agreement will result in approximately \$13 million⁷ in savings to ratepayers on a net-present-value ("NPV") basis when compared to the present value of retaining the PPAs (RR-DTE-4).

⁷ The Company later revised the savings estimate based on updated fall 2004 fuel and energy forecasts. See Section VI.C.

V. POSITIONS OF THE PARTIES

A. Attorney General

The Attorney General states that the Department should reject the Company's petition because it has failed to establish that the proposed Purchase and Sale Agreement complies with the maximum mitigation requirements of G.L. c. 164, § 1G(d)(1) (Attorney General Brief at 6). The Attorney General argues that the Company and CEA's valuation of the existing OSP PPAs was flawed, rendering any savings projections speculative (id.). The Attorney General also asserts that by not valuing the existing PPAs appropriately, the Company and CEA failed to properly evaluate the bid they received (id.).

The Attorney General claims that the Company failed to properly evaluate the terms of the existing OSP PPAs in determining their value (id.). The Attorney General identifies PPA provisions that grant the Company certain rights, and asserts that these entitlements affect the value of the existing PPAs, and therefore the savings calculations under the Purchase and Sale Agreement (id.). These PPA provisions include the Company's: (1) option to purchase the pro-rata portion of the OSP plant, expected to be fully depreciated at the end of the PPAs; (2) title to the Site Restoration Fund⁸ and OSP's obligations to restore the site, expected to be valued at more than \$26 million at the end of the PPAs; and (3) right to any net gain or the obligation to pay any net loss from OSP's sale or transfer of the site to a third party (id., citing Exh. NSTAR-BEC-GOL-1A, Section 5.6, at 23 and Amendment 6, at 2; Tr. at 45, 58-59).

⁸ The Site Restoration Fund is a fund to which the Company contributes for the purpose of restoring the site of the OSP units to, as close as is practicable, its condition prior to the construction of either unit (Tr. at 46-47, 51-53).

The Attorney General asserts that CEA did not assign any economic value to these contractual rights, but that there is a probability that some or all of these events could occur (Attorney General Brief at 7, citing Tr. at 43, 51-52, 56, 60).

The Attorney General also states that CEA neither analyzed whether the OSP units would be economic to operate in today's marketplace, nor did CEA make a financial valuation of the OSP units in order to determine their worth (id., citing Tr. at 24, 41). The Attorney General asserts that the OSP PPAs are therefore not adequately valued, and undermine the basis on which the Company and CEA conducted their negotiations with bidders (id.). The Attorney General concludes that by incorrectly valuing the existing OSP PPAs, the Company and CEA failed to demonstrate that the Purchase and Sale Agreement mitigates the transition costs to the maximum extent possible (id.).

The Attorney General also notes that only one participant submitted a final bid for the existing OSP PPAs (id. at 8, citing Tr. at 31). The Attorney General asserts that because the Company and CEA could not compare the TransCanada bid to any comparable bid, CEA's contention that the TransCanada bid provided the greatest level of mitigation of the above-market costs associated with the OSP Contracts is a speculative claim (id. at 8-9, citing Exh. NSTAR-RBH at 23-24).

B. The Company

The Company states the auction and the Purchase and Sale Agreement are consistent with the Act and NSTAR Electric's approved restructuring settlement (NSTAR Electric Brief at 6). Specifically, the Company states the Purchase and Sale Agreement is the result of an

open and competitive auction, consistent with the Act's requirement to maximize mitigation of transition costs (id.). Therefore, the Company states that the 2003 Auction maximized the mitigation of its transition costs relating to the OSP PPAs (id.).

The Company states that NSTAR Electric and CEA began developing the 2003 Auction in July 2003 (id.). The Company states that NSTAR Electric and CEA sought to design an auction that was equitable and structured to maximize the mitigation of transition costs associated with the entitlements under the Company's PPAs (id.). The Company explains the primary objective was to implement a process that ensured complete, uninhibited, non-discriminatory access to all data and information by any and all interested parties seeking to participate (id.).

The Company states the 2003 Auction was recently reviewed and approved by the Department in Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 04-60 (2004) (id. at 8). According to the Company, the Department found that the 2003 Auction was "equitable and structured to maximize the value of the contracts sold" (id., citing D.T.E. 04-60, at 25). The Company states that in the Department's recent approval of the 2003 Auction in D.T.E. 04-60, the Department noted a number of features that made the process competitive including: (1) a large number of parties participated in the 2003 Auction, (2) qualified bidders were provided with contract and invoice data on a uniform basis, (3) a formal mechanism was established to permit each qualified bidder to obtain additional information, (4) a CEA representative served as each bidder's single point of contact, allowing access to additional information while maintaining confidentiality, and (5) qualified bidders

were free to submit bids on any combination of NSTAR Electric's 24 entitlements, in order to maximize the value of the portfolio (id. at 8-9).

The Company states based on the evidence presented during the proceeding concerning the same auction previously approved by the Department in D.T.E. 04-60, it has demonstrated, and the Department has already found, that the auction process was competitive (id. at 9). Therefore, the Company concludes that the Department should find that the 2003 Auction was consistent with the Act and the Company's restructuring settlement (id.).

Regarding estimates of customer savings, the Company argues it has demonstrated that, even under the most conservative assumptions, the Purchase and Sale Agreement will produce savings for customers and, therefore, it is consistent with the Company's obligation to mitigate transition costs to the maximum extent possible (id.). The Company claims, as noted previously, the Purchase and Sale Agreement extinguishes all obligations for the Company to purchase power under the OSP PPAs (id., citing Exh. NSTAR-GOL at 12). The Company states that, in return, it is required to make monthly support payments over the life of the PPAs to TransCanada for its assuming all of the Company's rights and obligations under the PPAs (id., citing Exh. NSTAR-GOL at 12). The Company claims that the Purchase and Sale Agreement minimizes the Company's overall transition costs that it otherwise would collect from its customers by approximately \$13 million on a NPV basis (id., citing Att. RR-DTE-4; NSTAR-BEC-GOL-2).

The Company states although the Attorney General asks the Department to reject the TransCanada Purchase and Sale Agreement and associated ratemaking treatment, the Attorney

General does not dispute any of the evidence, analytical methods or legal standards presented by the Company (NSTAR Electric Reply Brief at 1-2). The Company disputes the Attorney General's contention that it is "speculative" to conclude that the Company satisfied the maximum mitigation requirement of the Act because the Company did not "assign the correct value" to the existing OSP PPAs and did not receive multiple bids solely for the OSP contracts (id. at 2). The Company argues, to the contrary, that the record establishes that the Company properly valued the future expense attributable to the OSP PPAs, and establishes that entering into the TransCanada Purchase and Sale Agreement will maximize mitigation and result in projected customer savings of approximately \$13 million on a NPV basis (id.). The Company concludes that the Department should reject the Attorney General's arguments and approve the Company's petition so that the significant customer benefits can be achieved (id.).

The Company points out that the Attorney General correctly recognizes that, in considering approval of a proposed buyout of a PPA, the Department applies a standard of reasonableness (id.). The Company states in determining whether a buyout of an obligation to purchase electricity is reasonable, the Department considers "whether the company used a competitive auction or sale that ensured complete, uninhibited, non-discriminatory access to all data and information by any and all interested parties seeking to participate in such auction or sale" (id., citing D.T.E. 04-60, at 21). The Company states an open, transparent, and fairly managed auction tests the market for, and the value of, an asset at the time of the offering (id., citing D.T.E. 04-60, at 24).

The Company argues that the Attorney General fails to acknowledge the Department's long-standing precedent that an open, transparent, and fairly managed auction constitutes a strong foundation for a finding of reasonableness (id. at 3). Further, the Company states, the same auction at issue in this case was already approved by the Department in D.T.E. 04-60, where the Department made its determination that the auction process provided "complete, uninhibited, non-discriminatory access to all data and information by all interested bidders and that the auction process was competitive, and, therefore, structured to maximize the value of the PPAs" (id. at 3, citing D.T.E. 04-60, at 25). Therefore, the Company claims that the Attorney General's argument that the Company failed to establish that it met the maximum mitigation requirement of the Act is incorrect (id.). The Company states that, based on the evidence presented, it has demonstrated that it has met the standards established in the Act and that the Attorney General's arguments, as described above, are without merit, and therefore the Purchase and Sale Agreement should be approved (id. at 3-4).

VI. ANALYSIS AND FINDINGS

A. The Auction Process

In evaluating the divestiture of generation assets, the Department first reviews whether the divestiture process was equitable and structured to maximize the value of the assets being sold. Western Massachusetts Electric Company, D.T.E. 00-68, at 12 (2000). In making these determinations, the Department considers whether a company used a "competitive auction sale" that ensured "complete, uninhibited, non-discriminatory access to all data and information by any and all interested parties seeking to participate in such auction or sale."

See G.L. c. 164, § 1A (b)(2). The Department has relied on the auction process also to determine whether a transaction involving a non-generation asset maximizes mitigation of transition costs. See D.T.E. 04-60, at 21; see also Western Massachusetts Electric Company, D.T.E. 01-99, at 10 (2002).

The Department notes a number of features of the Company's auction that highlight the competitive nature of the auction. First, a large number of parties participated in the auction; up to 90 parties were contacted initially, with 22 of those becoming Qualified Bidders and twelve Qualified Bidders eventually submitting bids (Exh. NSTAR-RBH at 10-11, 17). Next, Qualified Bidders were provided with contract and invoice data on a uniform basis, and a formal mechanism was established to permit each Qualified Bidder to obtain additional information (id. at 9-17). Each Qualified Bidder was assigned a CEA representative who served as that bidder's single point of contact, allowing access to additional information while maintaining confidentiality (id. at 9). Qualified Bidders were free to submit bids on any combination of NSTAR Electric's 24 entitlements, in order to maximize the value of the portfolio (id. at 6).

The record demonstrates that the auction process ensured complete, uninhibited, non-discriminatory access to all data and information by all interested bidders and that the auction process was competitive. See D.T.E. 04-60, at 21-22 (finding that NSTAR's 2003 auction process provided complete, uninhibited, non-discriminatory access to all data and information by all interested bidders and that the auction process was competitive, and, therefore, structured to maximize the value of the PPAs). Therefore, consistent with our

finding in D.T.E. 04-60, the Department finds that the auction process used was equitable and structured to maximize the value of the contracts sold.

The Department disagrees with the Attorney General's assertion that because only the winning bidder submitted a final bid for the existing OSP contracts, the Company could not compare it to another final bid, rendering as speculative the Company's claim that the TransCanada bid provided the greatest level of mitigation of the above-market costs associated with the PPAs (Attorney General Brief at 8-9, citing Tr. at 31; Exh. NSTAR-RBH at 23-24). The record demonstrates that there was significant interest and participation in the 2003 Auction, resulting in the receipt of twelve different bids, including two bids for the entire PPA portfolio and one bid for all but one of the PPAs (Exh. NSTAR-RBH at 17). The record also demonstrates that the auction process was highly structured and confidential, requiring each bidder to submit a bid without the benefit of knowing either the number of others who intended to submit bids, or the dollar amount of a competitor's bid (Tr. at 32-33). Additionally, CEA and NSTAR Electric worked equitably with each of the Qualified Bidders and with every economically viable bid to enhance the value of their respective bids (Exh. NSTAR-RBH at 21). There is no basis in the record to conclude that the 2003 Auction was fatally flawed because it resulted in only one viable bid for the OSP PPAs; an auction process is intended to maximize the opportunity for a competitive process, not guarantee the outcome.

Historically, the Department has relied on responses from the market, such as bids selected from a properly structured auction process, as the relevant indicators of economic value. See D.T.E. 04-60, at 22; see also Cambridge Electric Light Company, D.T.E. 01-94,

at 10 (2002). The record in NSTAR Electric's 2003 Auction indicates that Qualified Bidders had no knowledge of either the amount of a bid or the number of competing bids (Exh. NSTAR-RBH at 12; Tr. at 32). Each Qualified Bidder received equal treatment and was given the opportunity to submit a final bid (Exh. NSTAR-RBH at 6-7, 11, 21). The Department finds that the fact that only one Qualified Bidder submitted a final bid does not annul the competitive auction process, nor does it prevent the Company from recognizing the TransCanada bid as the transaction that will most highly maximize the mitigation of transition costs.

B. Maximization of Mitigation

1. Valuing the Contract Provisions

The Attorney General argues that the Purchase and Sale Agreement does not maximize the mitigation of the transition costs paid by the ratepayers because the Company failed to properly evaluate the terms of the existing OSP PPAs in determining their value (Attorney General Brief at 6). In particular, the Attorney General claims that the Company and CEA did not value certain contractual rights, did not analyze whether the OSP units would be economic to operate in today's marketplace, and did not make a financial valuation of the OSP units in order to determine their worth (id. at 6, 7). The Attorney General concludes that these issues undermine the basis on which the Company and CEA conducted their negotiations with bidders (id. at 7).

The Attorney General questions CEA's decision to assign zero value to the following three contractual provisions: (1) the option to purchase the pro-rata portion of the plant;

(2) the title to the Site Restoration Fund and OSP's obligations to restore the site; and (3) the right to any net gain, or the obligation to pay any net loss, from OSP's sale or transfer of the site to a third party (id. at 6, citing Exh. NSTAR-BEC-GOL-1A, Section 5.6, at 23 and Amendment 6, at 2; Tr. at 45, 58-59). However, the Department finds it reasonable for the Company to assess values of zero for these provisions.

Regarding the option to purchase the pro-rata portion of the plant, the Department agrees with the Company that for the purpose of evaluating the Purchase and Sale Agreement, it is reasonable to assign zero value to the option, especially given elements of the Company's restructuring settlement distancing the Company from the generation business (see Tr. at 43). Regarding the Site Restoration Fund, given the periodic re-assessment of the Site Restoration Fund by an outside environmental expert, the Department finds it unlikely that there will be a significant overage or underage of funds at the termination of the PPAs (see Tr. at 47, 51-52, 56-57). The Department therefore finds it reasonable that the Company assign a zero value to the Site Restoration Fund for the purpose of evaluating the Purchase and Sale Agreement. Referring to the possible sale of the plant, the Department agrees with the Company that this provision involves multiple unpredictable contingencies and, given such uncertainties, it is therefore reasonable to assign zero value to this provision (see Tr. at 58-60).

2. Continued Operation of the Plants

The Attorney General questioned whether the OSP units would be economic to maintain their in-service status in today's marketplace (Attorney General Brief at 7). The PPAs do, in fact, include a clause for an option to purchase an interest in the OSP units upon termination of

the PPAs, provided OSP or its successor determines not to operate the units (Exh. NSTAR-BEC-GOL-1A at 23, 38-39). However, given the uncertainties associated with the Company's rights to acquire the OSP units upon expiration of the PPAs and with the negotiated purchase price, the Department considers that valuation of the OSP facility under a hypothetical scenario of the Company's ownership of the plant in the future would be mere speculation with no practical value.

The record shows that the Company did, in fact, weigh the future costs of the OSP facility against the future market prices (RR-DTE-4, Att. AG-1-14 CONFIDENTIAL). According to the Company, the cost to produce the output to the Company is nearly \$129 million higher than the market value of the electricity produced on a NPV basis (id.). Also, the record shows that the existing PPAs are cost-of-service contracts, which means that the Company's payments are based on the actual costs to operate the facility (Exh. NSTAR-BEC-GOL-1A).

The Department previously reviewed the methodology used by the Company for the valuation of the existing PPAs and found that it was consistent with the methodology that was scrutinized and approved by the Department in Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 04-60, at 27 (2004). PPA valuation requires the use of certain assumptions, and the Department finds based on the evidence that the assumptions used by the Company with regards to the OSP contracts were reasonable. Accordingly, the Department finds that the Company appropriately addressed the economic value of continuing to operate the OSP plant.

3. Conclusion

When an auction process is used to divest of contractual entitlements, the marketplace has a chance to value the contracts, and any above-market component should be treated in the same manner as other divestiture costs. Boston Edison Company/Cambridge Electric Light Company, D.T.E. 98-119/126, at 29, 33 (1999). Here, the Department relies on an adequate auction process to set the value of the PPAs. The Department has made its determination that the auction process provided complete, uninhibited, non-discriminatory access to all data and information by all interested bidders and that the auction process was competitive, and, therefore, structured to maximize the value of the PPAs. Therefore, the Department finds that the proposed Purchase and Sale Agreement maximizes the value of the PPAs and mitigation of the transition costs.

C. Customer Savings

NSTAR Electric claims that as a result of terminating the OSP PPAs through the Purchase and Sale Agreement, NSTAR Electric ratepayers will save approximately \$13 million in transition costs on a NPV basis (Exh. NSTAR-BEC-GOL-2 ERRATA at 1). The Company determined the savings of approximately \$13 million associated with the Purchase and Sale Agreement by comparing the forecast transition charges to be paid by customers if the existing OSP PPAs were to remain in effect with the transition charges to be paid by customers under

the Purchase and Sale Agreement (Exhs. NSTAR-GOL at 13, 17; NSTAR-BEC-GOL-3 CONFIDENTIAL; NSTAR-BEC-GOL-4 CONFIDENTIAL; see also RR-DTE-4)⁹.

NSTAR Electric also ran its savings analysis under a variety of scenarios including various assumptions regarding the capacity factor of the OSP units and the market price of electricity; under all of these scenarios, the Purchase and Sale Agreement still produce savings to customers (Exh. DTE-1-33). After reviewing the Company's economic analyses, the Department finds NSTAR Electric's claims of savings to be credible under several assumptions, and that assigning the OSP PPAs is likely to achieve savings to ratepayers. As filed on November 12, 2004, the projected customer savings, after updates to the Henwood study, remain substantial at \$8.1 million on a NPV basis, or 3.14 percent (RR-DTE-6 (2nd supp.), Attachment (d); Exhs. NSTAR-RBH-6; NSTAR-BEC-GOL-2).

Although the fall 2004 Henwood study was received by the Company on November 1, 2004, the new Henwood forecast did not include a forecast for the Southeastern Massachusetts-Rhode Island zone, which had been used in the Company's initial analyses. When this discrepancy was pointed out, the Company requested this additional information from Henwood and then provided to the Department RR-DTE-6 (2nd supp.), which consists of

⁹ Exhibit NSTAR-BEC-GOL-4 CONFIDENTIAL, which is in the same format as Exhibit NSTAR-BEC-GOL-3 CONFIDENTIAL, computes the Company's Transition Charges with the costs incurred under the Purchase and Sale Agreement instead of the existing OSP PPAs (Exh. NSTAR-BEC-GOL-4 CONFIDENTIAL at 6 - 8). This exhibit also includes the effect on the mitigation incentive (Exh. NSTAR-BEC-GOL-4 CONFIDENTIAL at 5). Exhibit NSTAR-BEC-GOL-6 CONFIDENTIAL and Exhibit NSTAR-BEC-GOL-8 CONFIDENTIAL compute the impact of the Purchase and Sale Agreement on the costs incurred for standard offer service. These changes are included in Exhibit NSTAR-BEC-GOL-4 CONFIDENTIAL at 7 and 8.

the Henwood fall 2004 update and the following updated Company exhibits: NSTAR-RBH-5, NSTAR-RBH-6, NSTAR-BEC-GOL-2, NSTAR-BEC-GOL-3, and NSTAR-BEC-GOL-4.

Although the savings values as noted in the Company's initial filing have changed from approximately \$13 million to approximately \$8.1 million as a result of this update, the Purchase and Sale Agreement continues to produce savings under the updated data.

The Company proposes to recover the payments made under the Purchase and Sale Agreement through the variable portion of its transition charge (Exh. NSTAR-GOL at 15-18). The Department finds that this proposal is consistent with the Company's restructuring settlement and the requirements of the Act. Therefore, the Company is permitted to recover the payments made pursuant to the Purchase and Sale Agreement through the variable portion of the transition charge. However, the Department will reconcile all costs associated with the Purchase and Sale Agreement in the Company's future transition cost reconciliation filings.

Because assigning the OSP PPAs is likely to achieve savings for ratepayers and because the savings mitigate NSTAR Electric's transition costs, the Department finds that the transaction is in the public interest and consistent with the requirements of G.L. c. 164, § 1G(d)(2)(ii). Therefore, the Department approves the Purchase and Sale Agreement.

VIII. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the petition of Boston Edison Company d/b/a NSTAR Electric for approval of a purchase and sale agreement entered into on June 23, 2004, by and between Boston Edison Company and TransCanada Energy Ltd., is hereby APPROVED; and it is

FURTHER ORDERED: That Boston Edison Company d/b/a NSTAR Electric's proposed ratemaking treatment relating to the purchase and sale agreement, is hereby APPROVED, subject to reconciliation and refund; and it is

FURTHER ORDERED: That Boston Edison Company d/b/a NSTAR Electric shall comply with all directives contained herein.

By Order of the Department,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).